

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JACKSON LEE, }  
v. }  
Plaintiff, }  
v. } Civil No. 18-cv-2453 (KPF)  
NBCUNIVERSAL MEDIA, LLC }  
Defendant. }

## ANSWER

Defendant NBCUniversal Media, LLC (“NBCUniversal”), as and for its Answer to the Complaint herein, states as follows:

## **Nature of the Action**

1. The allegations in paragraph 1 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations that plaintiff is a professional photographer and that he owns and registered the allegedly infringed photograph, admits that the Complaint purports to assert a civil action for copyright infringement and that plaintiff seeks monetary relief, and otherwise denies the allegations in paragraph 1 of the Complaint.

## **Jurisdiction and Venue**

2. The allegations in paragraph 2 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal admits that the Complaint purports to assert a civil action for copyright infringement.

3. The allegations in paragraph 3 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal admits that it does business in New York.

4. The allegations in paragraph 4 of the Complaint state legal conclusions to which no responsive pleading is required.

5. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. NBCUniversal admits that NBCUniversal Media, LLC is a limited liability company organized under the laws of the state of Delaware, with a place of business at 30 Rockefeller Plaza, New York, New York 10112.

7. NBCUniversal admits the allegations in paragraph 7 of the Complaint.

8. NBCUniversal admits the allegations in paragraph 8 of the Complaint.

9. NBCUniversal admits that news stories concerning entertainment, celebrities and other matters of public interest are published on the today.com website, which also carries paid advertising. NBCUniversal otherwise denies the allegations in paragraph 9 of the Complaint.

10. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint.

11. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. NBCUniversal denies the allegations in paragraph 13 of the Complaint, refers to the article identified in paragraph 13 of the Complaint for the actual content thereof,

and states that the article embedded an image of John Legend and his daughter that was posted on the Instagram feed of Chrissy Teigen.

14. NBCUniversal denies knowledge or information sufficient to form a belief as to whether plaintiff granted a license, permission or consent to Ms. Teigen or others that would permit the use of the image he allegedly owned in the context of defendant's article, and further states that it was not legally required to license the image from plaintiff in order to embed the image from Ms. Teigen's Instagram feed in the context of its article.

15. NBCUniversal denies knowledge or information sufficient to form a belief as to whether plaintiff granted a license, permission or consent to Ms. Teigen or others that would permit the use of the image he allegedly owned in the context of defendant's article, and further states that it was not legally required to obtain plaintiff's permission or consent in order to embed the image from Ms. Teigen's Instagram feed in the context of its article.

16. For its answer to paragraph 16 of the Complaint, NBCUniversal incorporates each and every answer herein to paragraphs 1 through 15 of the Complaint.

17. NBCUniversal denies the allegations in paragraph 17 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

18. NBCUniversal denies the allegations in paragraph 18 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

19. NBCUniversal denies the allegations in paragraph 19 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

20. NBCUniversal denies the allegations in paragraph 20 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

21. NBCUniversal denies the allegations in paragraph 21 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

22. NBCUniversal denies the allegations in paragraph 22 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

23. NBCUniversal denies the allegations in paragraph 23 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

24. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

25. Plaintiff's claim is barred because NBCUniversal did not make any use of the plaintiff's alleged work within the scope of the exclusive rights set forth in 17 U.S.C. § 106.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

26. Plaintiff's claim is barred by 17 U.S.C. § 512(d).

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

27. Any use by NBCUniversal of plaintiff's alleged work was pursuant to an express or implied license, or was otherwise consented to or permitted by plaintiff or one licensed or authorized by plaintiff to provide such consent or permission.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

28. Plaintiff relinquished his rights to bring this action for copyright infringement of his alleged work.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

29. Any use by NBCUniversal of plaintiff's alleged work was a fair use under 17 U.S.C. § 107.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

30. The claims in the Complaint are barred in whole or in part under the doctrines of waiver, estoppel and/or unclean hands.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

31. Plaintiff suffered no harm or compensable damages as a result of defendant's alleged conduct.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

32. Any infringement by defendant was innocent.

WHEREFORE, NBCUniversal prays that this Court enter judgment dismissing the Complaint in its entirety, awarding NBCUniversal its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505 and/or any other applicable provisions, and granting such other and further relief as the Court may deem just and proper.

**NBCUniversal Media, LLC,**

By its attorney,

/s/ Erik Bierbauer (EB 0606)

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Dated: May 10, 2018

**Certificate of Service**

I certify that a copy of this Answer was served on Plaintiff's counsel via ECF on May 10, 2018.

/s/ Erik Bierbauer